



6-1

**COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PLANNING AND BUILDING
STAFF REPORT**

PLANNING COMMISSION

*Promoting the wise use of land
Helping build great communities*

MEETING DATE February 9, 2006	CONTACT/PHONE Matt Janssen, project manager 781-5104	APPLICANT Magda Fichter	FILE NO. N/A
SUBJECT Appeal by Magda Fichter of a Planning Director determination [pursuant to Coastal Zone Land Use Ordinance Section 23.04.118c] that a hot tub is not allowed within the bluff setback. The site is located within the Residential Single Family land use category and is located at 930 Pacific Street, in the community of Cayucos. The site is in the Estero Planning Area.			
RECOMMENDED ACTION Deny the appeal based on the findings listed in Exhibit A.			
ENVIRONMENTAL DETERMINATION Not required			
LAND USE CATEGORY Residential Single Family	COMBINING DESIGNATION Local Coastal Program, Geologic Study Area, Coastal Appealable Zone	ASSESSOR PARCEL NUMBER 064,151,007	SUPERVISOR DISTRICT(S) 2
PLANNING AREA STANDARDS: None applicable			
LAND USE ORDINANCE STANDARDS: Sections 23.04.118; Blufftop Setbacks			
EXISTING USES: Single Family Residence			
SURROUNDING LAND USE CATEGORIES AND USES: <i>North:</i> Residential Single Family/single family residences <i>East:</i> Residential Single Family/single family residences <i>South:</i> Residential Single Family/single family residences <i>West:</i> Pacific Ocean			
OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: Cayucos Citizen's Advisory Council			
TOPOGRAPHY: Relatively level to steeply sloping		VEGETATION: Ornamentals	
SERVICES: Water supply: community Sewage Disposal: community Fire Protection: Cayucos Fire			
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER ♦ SAN LUIS OBISPO ♦ CALIFORNIA 93408 ♦ (805) 781-5600 ♦ FAX: (805) 781-1242			

6-2

BACKGROUND:

On or about April 3, 2005, the Code Enforcement Division of Planning and Building Department received a telephone complaint regarding a hot tub on a neighboring property. Code Enforcement staff conducted a site visit on April 5, 2005, and a Notice of Violation from Code Enforcement was mailed out soon thereafter. On April 21, 2005, the landowner with the hot tub (Ms. Magda Fichter) responded to the Notice of Violation in writing (see attachment). In her response, Ms. Fichter indicates that she had “checked with the county about a portable spa”, and was told that “the only issue on the bluff was that it could not be a permanent fixture...”.

Sometime in the spring of 2005, Karen Nall (Permit Center Senior Planner) approached Matt Janssen (Coastal Permitting Supervisor) about a question a member of the public had at the Permit Center regarding the issue of “a hot tub in a bluff setback”. At that time, Mr. Janssen indicated to Ms. Nall that the use was not allowed because it was not listed (or similar to the uses listed) in the *Exceptions to bluff setback requirements* in Section 23.04.118c of the Coastal Zone Land Use Ordinance. It’s impossible to know whether the conversation the Mr. Janssen and Ms. Nall had was related to the Fichter property. However, the question is rare and the timing is similar.

COASTAL ZONE LAND USE ORDINANCE STANDARDS:

Although it is tempting to launch into a discussion of whether a hot tub (portable or permanent) is “development” or a “structure” in the coastal zone, staff feels that this is not the crux of the issue in front of the Planning Commission. The issue of this Planning Director’s appeal is whether a hot tub is an allowed use within a bluff setback.

Staff is often confronted with questions regarding what is allowed within a bluff setback. Most of these questions are related to fences, concrete “flatwork”, or “deck-like” structures (we use the term “deck-like” because decks are not allowed within a bluff setback; see discussion below). However, many landowners would like something similar to a deck between their residence and the coastal bluff. For example, staff has historically allowed structures that are wood or concrete as long as they are; 100 square feet or less, less twelve inches above natural grade, and not connected to each other or the single family residence. The theory here is that these small “deck-like” structures will float away in a high storm and/or wave event, and that their detachment from the property would not jeopardize the structural integrity of the single family residence on the property. If these structures detach from the property during a high storm and/or wave event without causing structural damage to the single family residence, then a shoreline protection device (aka seawall) would not be necessitated by this event (a landowner may have other legitimate reasons for a seawall). Coastal Commission staff has endorsed this theory and our interpretation of this section of our Coastal Zone Land Use Ordinance (CZLUO).

To gain a better understanding of how staff interprets this section of the CZLUO, it’s worthwhile to spend a minute-or-two discussing the sequencing of the ordinance. The CZLUO starts by telling us that the provisions in the Coastal Zone Land Use Ordinance are minimum requirements, as set forth in Section 23.01.041a,1 (*Rules of Interpretation*):

- (1) **Minimum requirements.** *The regulations and standards set forth in this title are to be considered minimum requirements, which are binding upon all persons and bodies charged with administering or enforcing this title.*

Section 23.01.041d,1 (*Rules of interpretation; Allowable uses*) then tells us that if staff (as designated by the Planning Director) feel that an unlisted use is similar to a listed use, then we need to do so in writing. Specifically, this section says:

- (1) *Where a proposed land use is not specifically listed in Section D, Chapter 7, Part I of the Land Use Element, the Planning Director will review the proposed use when requested to do so by letter and, based upon the characteristics of the use, determine which of the uses listed in the Land Use Element definitions is equivalent to that proposed, and*
- (2) *Upon a written determination by the Planning Director that a proposed unlisted use is equivalent in its nature and intensity to a listed use, the proposed use will be treated in the same manner as the listed use in determining where it is allowed, what permits are required and what standards affect its establishment.*

When Mr. Janssen was approached by Ms. Nall about a proposed hot tub in the spring in 2005, he did not consider the proposed use to be similar or equivalent to a listed use because the Department has never interpreted the *Exceptions* section of the CZLUO to include hot tubs (or anything similar). Therefore, Mr. Janssen did not forward the issue to the Planning Director for a written determination. So, in affect, the appellant is appealing the Planning Director's lack of a determination in this case (i.e. no written determination is a determination in and of itself).

Next, the CZLUO instructs us how to implement the standards and requirements set forth in the *Setbacks* Section (23.04.100). Specifically, this section starts by stating:

The purpose of these standards is to provide for open areas around structures where needed for : visibility, traffic safety and fire safety; access to and around buildings, access to natural light, ventilation and direct sunlight; separation of incompatible land uses; and space for privacy, landscaping and recreation.

Within the *Setbacks* Section, the *Blufftop Setbacks* Section of the CZLUO (23.04.118) states the following:

New development or expansion of existing uses proposed to be located adjacent to a beach or coastal bluff shall be located in accordance with the setbacks provided by this section...

Subsection 23.04.118c of the *Bluff Setbacks* Section of the CZLUO (*Exceptions to bluff setback requirements*), lists the uses allowed within a bluff setback area. Specifically, it states the following:

Exceptions to bluff setback requirements: *The minimum setback requirements of this section do not apply to the following:*

- (1) *Wood fences or hedges three feet or less in height above natural grade, and wire fences no higher than six feet located in the Agriculture or Rural Lands categories.*
- (2) *Landscaping, minor earthworks, steps or similar design elements (not including decks or other solid structures) placed directly on natural grade.*

- (3) *Roof and wall projections including cantilevered and projecting architectural features including chimneys, bay windows, balconies, cornices, eaves and rain gutters may project into the required setback a maximum of 30 inches.*

Because a hot tub is not listed in the *Exceptions to bluff setback requirements* section, and because a hot tub is not similar or equivalent to any of the uses allowed within the bluff setback, the use is not allowed.

In addition to not being listed in the *Exceptions* section, and a hot tub not being similar or equivalent to any of the uses listed, it is also notable that the weight of a full hot tub may contribute to the instability of a coastal bluff over time. It's not known if the issue of hot tub weight within a bluff setback has ever been evaluated in detail by an expert, but staff feels that it is something worth of mention and consideration. In short, staff feels that something that could weight as much as 4500 pounds (*this conservative calculation is based on a four person hot tub full of water and four people*) may result in long term adverse impacts to the stability of a coastal bluff. Potential adverse impacts to coastal bluffs may lead to the need of a shoreline protection device (aka seawall), and seawalls can lead to adverse geologic and visual impacts to the beach and the users of the beach.

Finally, the two issues of privacy and visibility deserve consideration. As stated above, privacy is one of the issues addressed within the *Setbacks* Section of the CZLUO. Since only a three foot tall fence is allowed within the bluff setback in a residential area (see above), everything that occurs within your neighbor's bluff setback is also part of your life. Although the issue of visibility (as listed above in *Setbacks*) is primarily intended to preserve visibility around structures, another type of visibility is worthy of consideration; the visibility of the hot tubs from the beach. Although the single family residences would dominate the view from the beach, hot tubs of all different sizes, shapes, and colors may result in an increased adverse visual impact to the users of the public beach. Staff feels that allowing this use would be contrary to the goals of the *Setbacks* section (see above) and several coastal policies protecting visual resources.

Staff report prepared by Matt Janssen

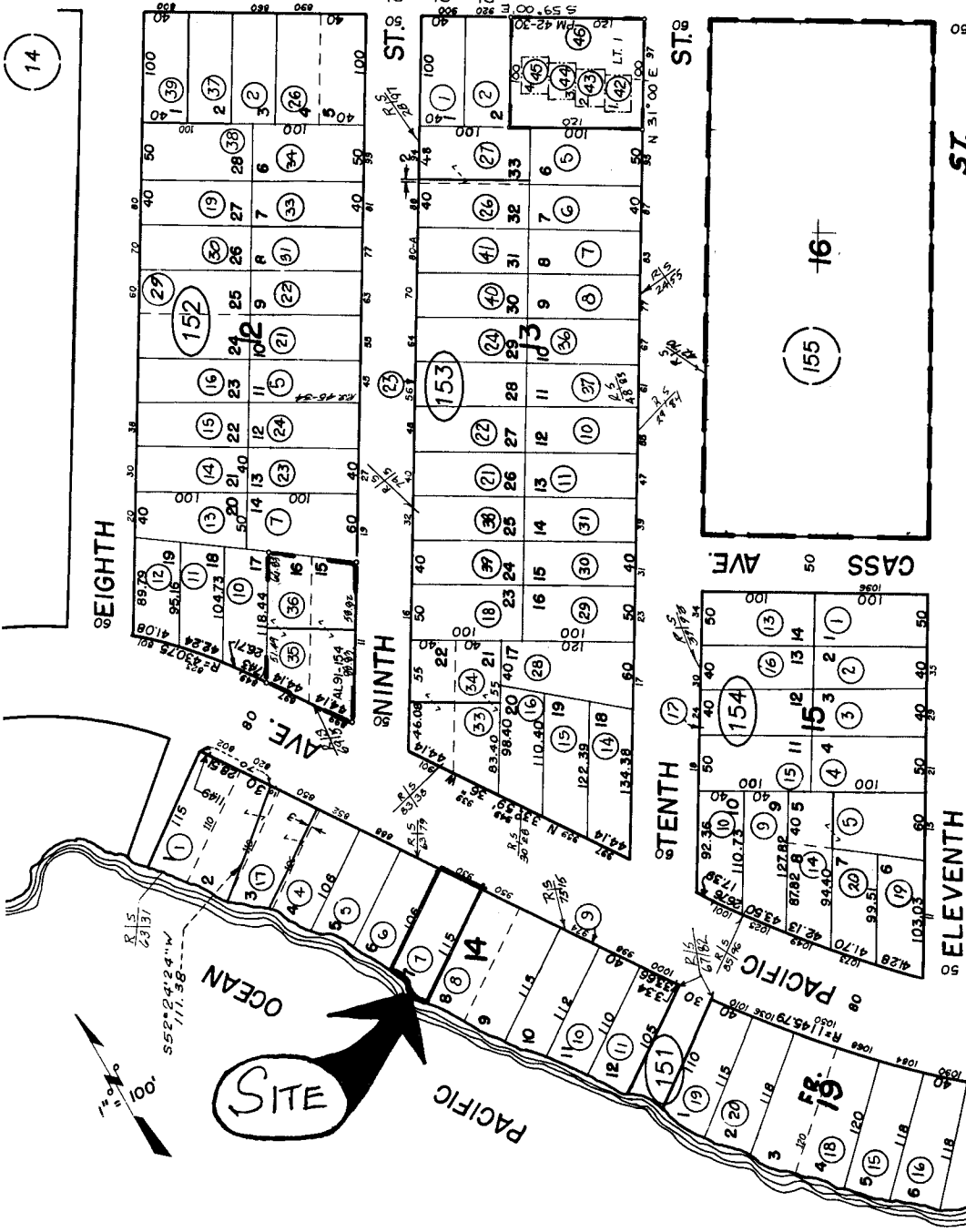
6-5

EXHIBIT A - FINDINGS

- A. The proposed use of a hot tub within the bluff setback is not allowed because it is not specifically listed within the *Exceptions to bluff setback requirements* section of the Coastal Zone Land Use Ordinance (Section 23.04.118c).
- B. The proposed use of a hot tub within the bluff setback is not allowed because it is not similar or equivalent in nature and intensity to any of the uses listed in the *Exceptions to bluff setback requirements* of the Coastal Zone Land Use Ordinance (Section 23.04.118c).
- C. The proposed use of a hot tub within the bluff setback is not allowed because the proposed use is inconsistent with many of the listed goals of the Setbacks section; specifically, the use may lead to incompatibilities between properties regarding privacy.
- D. The proposed use of a hot tub within the bluff setback is not allowed because the proposed use is inconsistent with many of the listed goals of the Setbacks section; specifically, the use may lead to adverse individual and cumulative visibility impacts when viewed from the adjacent public beach.
- E. This request for an interpretation of the Coastal Zone Land Use Ordinance is not a "project" under the California Environmental Quality Act, and therefore does not require an environmental determination.

64-15

14



R.M. 03-15

R.M. 03-14

13

57-08

AVE.

50

7-9

REVISIONS	
DATE	DESCRIPTION
10-07-03	NA
10-29-03	NA
12-06-03	NA
11-17-04	NA
03-17-05	NA

0 100 200

THIS MAP IS PREPARED FOR ASSESSMENT PURPOSES ONLY.

RM. 42-30, CONDO PLAN, O.R. 3061-878

NOTE: EACH UNIT INCLUDES AN INTEREST IN LOT 1 OF PM42-30

AL91-154, O.R. VOL. 4085, PGS. 724-730.

MORRO ROCK VIEW SUB. NO. 4, R.M. Bk. 03, Pg. 114

PASO ROBLES BEACH NO. 1, R.M. Bk. 03, Pg. 15

ASSESSOR'S MAP, COUNTY OF SAN LUIS OBISPO, CA. BOOK 084 PAGE 15

R.M. 03-15

R.M. 03-14

16

57-08

AVE.

50

57

16

57-08

AVE.

50

57-08

AVE.

50

57-08

AVE.

50

San Luis Obispo County Department of Planning and Building

NOTE: To appeal a Board of Supervisors decision you will need to obtain appeal forms from the California Coastal Commission - 725 Front Street, Suite 300 - Santa Cruz, CA (408) 427-4863.

PROJECT INFORMATION

Type of permit being appealed: SEE ATTACHED

☐ Plot Plan ☐ Minor Use Permit ☐ Development Plan ☐ Variance ☐ Land Division

☐ Lot Line Adjustment ☒ Other APN 064,151,007 File Number: _____

The decision was made by: SEE ATTACHED

☒ Planning Director ☐ Building Official ☐ Administrative Hearing Officer ☐ Subdivision Review Board

☐ Planning Commission ☐ Other 10-24-05 Date the application was acted on _____

The decision is appealed to:

☐ Board of Construction Appeals ☐ Board of Handicapped Access ☒ Planning Commission ☐ Board of Supervisors

BASIS FOR APPEAL

Please note: An appeal must be filed by an aggrieved person or the applicant at each stage in the process if they are still unsatisfied by the last action.

☒ INCOMPATIBLE WITH THE LCP. The development does not conform to the standards set forth in the Coastal Zone Land Use Ordinance (CZLUO) of the County of San Luis Obispo for the following reasons (attach additional sheets if necessary):

Explain: SEE ATTACHED

☐ INCOMPATIBLE WITH PUBLIC ACCESS POLICIES: The development does not conform to the public access policies of the California Coastal Act - Section 30210 et seq. Of the Public Resource Code (attach additional sheets if necessary);

Explain: _____

Specific Conditions. The specific conditions that I wish to appeal that relate to the above referenced grounds for appeal are

Condition Number	Reason for appeal (attach additional sheets if necessary)

APPELLANT INFORMATION

Print name: Magda Fichter c/o P. Terence Schubert

Address: 1254 Marsh St., San Luis Obispo, CA 93401 Phone Number (daytime): (805) 543-1113

I am the authorized representative of

and am the applicant or an aggrieved person pursuant to the Coastal Zone Land Use Ordinance (CZLUO) and are appealing the project based on either one or both of the following grounds, as specified in the CZLUO and State Public Resource Code Section 30603 and have completed this form accurately and declare all statements made here are true.

Signature P. Terence Schubert, Esq.

Nov. 7, 2005

Date

OFFICE USE ONLY

Date Received: 11-7-05

Amount Paid: None at this time

By: MCV

Receipt No. (if applicable): N/A

Revised 5/05/04/LF

COUNTY GOVERNMENT CENTER • SAN LUIS OBISPO • CALIFORNIA 93408 • (805) 781-5600 • 1-800-834-4636

EMAIL: ipcoplbg@slonet.org

FAX: (805) 781-1242

WEBSITE: <http://www.slcooplanbldg.com>

6-8

ATTACHMENT TO COASTAL ZONE APPEAL APPLICATION

On or about April 12, 2005, Ms. Magda Fichter received a Notice of Violation from Timothy L. Fielder of the San Luis Obispo County Department of Planning and Building, a copy of which is attached hereto, marked as Exhibit "A". Clarification of the basis for the Notice of Violation was sought through communications with County staff, specifically, Mr. Fielder, Mr. Randy Sabin, Ms. Karen Nall, Ms. Marie Cowan, and Mr. Matt Janssen.

On or about April 21, 2005, Ms. Fichter replied to the Notice of Violation by letter dated April 21, 2005, a copy of which is attached hereto, marked as Exhibit "B".

In October of 2005, Ms. Fichter was advised, thorough her representative, to request a clarification of the County's position in writing. This clarification was sought through telephone communications with Ms. Marie Cowan, and by e-mail to Ms. Cowan of October 7, 2005, a copy of which is attached hereto, marked as Exhibit "C".

On October 17, 2005, Mr. Janssen advised the Appellants' counsel that San Luis Obispo County Code Section 23.04.118c did not allow a hot tub to be placed within a bluff setback. A copy of e-mail by which this information was provided to the Appellant is attached hereto, marked as Exhibit "D".

On October 21, 2005, Appellant's representative requested additional clarification concerning the interpretation of County Code Section 23.04.118 that had been provided by County representative Matt Janssen. A copy of the request of this clarification is attached hereto, marked as Exhibit "E".

On October 24, 2005, Appellant's representative received another e-mail from Mr. Janssen concerning his interpretation of Section 23.04.118. A copy of the e-mail providing this information is attached hereto, marked as Exhibit "F".

On October 24, 2005, Appellant's representative requested further clarification or a reconsideration of the County's position with regard to the placement of the portable hot tub in the bluff setback area at issue. A copy of the e-mail which was sent to Mr. Janssen is attached hereto, marked as Exhibit "G".

On October 24, 2005, Appellant's representative received an e-mail from Mr. Janssen, advising that the County's determination was the hot tub is not allowed. Mr. Janssen further advised Appellant that an Appeal to this determination could be taken to the Planning Commission, and that there would be no charge for this Appeal. A copy of this e-mail is attached hereto, marked as Exhibit "H".

On November 4, 2005, the Appellant sought to obtain a form in which to file this Appeal, but was advised by representatives of the County Department of Planning that no forms were available on that date. Appellant sought to file the Appeal again on November 7, 2005, and was advised by Planning Department staff that a fee of \$604.00 would need to be paid before the Appeal would be accepted, contrary to the interpretation provided by Mr. Janssen on October 24, 2005 (see Exhibit "H"). Clarification of the County's position on the fee was sought through an e-mail sent by Appellant's representative to Mr. Janssen on November 7, 2005, a copy of which is attached hereto, marked as Exhibit "I".

Mr. Jansen replied via that e-mail attached hereto, marked as Exhibit "J".

In response to the information received from the County with regard to the fee for the Appeal of the County's interpretation of Section 23.04.118, Appellant's representative sent an e-mail to Mr. Jansen on November 7, 2005, a copy of which is attached hereto, marked as Exhibit "K".

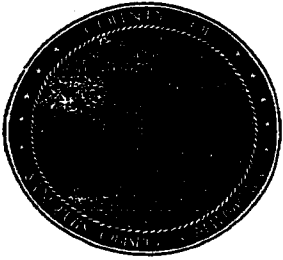
As of the drafting of this Appeal, no response has been received from the County to that e-mail attached hereto as Exhibit "K."

The Appellant is appealing the following issues: (1) Whether San Luis Obispo County Code Section 23.04.118 prohibits the placement of a portable hot tub in the position in which it is located at 930 Pacific Street, Cayucos, California; and (2) whether Appellant is required to pay a fee for the Appeal of this interpretation.

It is Appellant's position that Section 23.04.118 does not prohibit the placement of the portable unit at Appellant's residence. The unit at issue does not require attachment to the ground, and its placement at 930 Pacific Street is not in violation of Section 23.04.118.

6-10

EXHIBIT A



6-11

**SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING**

**VICTOR HOLANDA, AICP
DIRECTOR**

April 12, 2005

Magda Fichter
PO Box 257
Cayucos, Ca 93430

NOTICE OF VIOLATION

Dear Ms. Fichter:

We have recently determined that there are violations of county code at your property located at:

ADDRESS	PARCEL NUMBER
930 Pacific St	064,151,007

Violations:

- 1 SLOCC 19.01.220 as defined by
SLOCC 19.04.020 Permits required for the installation of the hot tub/spa

Violations of County Code make your property a public nuisance and are misdemeanors, so please take this notice seriously. We will assist you if possible, but it is your responsibility to resolve this problem.

How to bring your property into compliance:

- 1 Remove the hot tub from the bluff setback area, and apply for a permit to install it in an allowed area.

6-17

EXHIBIT B



April 21, 2005

Subject: Notice of Violation, 930 Pacific, Cayucos, CA APN 064,151,007

Dear Mr. Fielder:

I am very sorry that my neighbor has created this problem. I have just built this house and the exterior electrical was approved during final inspection. I checked with the county about a portable spa, and was told the only issue on the bluff was that it could not be a permanent fixture, no permanent decks, slabs, or anything like that. So when I purchased the spa and placed it in my yard, I had no idea it would be a problem.

I am going to ask for a hearing and therefore this is my formal request for an extension as stated in your correspondence.

I will be turning this over to my attorney, Terrence Schubert for his advise and then we will be contacting you.

If you have any further questions please do not hesitate to contact me by phone, fax, email or mail. All of my information is below.

I produce a trade-show that is taking place in Las Vegas at the end of this month and I will be out of town from the 25th through the 5th.

If you need to contact my attorney his number is 543-1113.

Thank you for your understanding regarding this situation.

Magda E. Fichter

Cc: Terrence Schubert, Attorney at Law

SHOW MANAGEMENT, INC.

71 S. Ocean Avenue • Box 257 • Cayucos, CA 93430
00.MAGDA.4U or 800.624.3248 or 805.995.2989 • F 805.995.2504 • W www.iecsc.com • E magda@magda.com

6-14

EXHIBIT C

6-15

Dear Ms. Cowan:

10/7/05

As we discussed, I represent Magda Fichter with regard to the County Code issue which has arisen in connection with the portable hot tub that was installed, after consultations with the County, in her backyard in Cayucos.

I have previously spoken with Tim Fielder, Randy Sabin and Karen Nall regarding this situation, and I met with Mr. Sabin during a site visit at Ms. Fichter's residence. After I met with Mr. Sabin, I spoke with Karen Nall, and she advised me that the County's concerns revolved around bluff stability, which mirrored the discussions that I had previously had with Mr. Sabin. Ms. Nall informed me that she would discuss this matter with Matt Janssen, and that she would get back to me with any questions, concerns or any clarifications and updates as to the County's position.

I have not heard from Ms. Nall (or any other County representative) since we last spoke some time ago, and the voicemail message (asking for an update) that I left with her some weeks ago has not been returned. Accordingly, to my knowledge, this issue is still on Matt Janssen's desk for some type of judgment call on his behalf. However, in speaking with Ms. Fichter, she understands otherwise, and has advised me that you are now working on this matter, in place of Mr. Sabin.

It would be greatly appreciated if you could advise me as to the County's current position on this matter, at your earliest convenience. Since there is at least some confusion, perhaps only on my part, a written communication would be appreciated.

I can be reached by phone at 543-1113, and my address is 1254 Marsh Street, SLO 93401, fax: 543-1205. As we discussed, please direct all future correspondence regarding this matter to me.

Your courtesy and cooperation are appreciated.

Sincerely yours,

Terry Schubert

EXHIBIT "C"

6-16

EXHIBIT D

6-17

Terry: 10/17/05

Marie Cowan thought it best if I responded directly to you on this one.

Yes, I do remember Karen Nall coming back to talk with me about Magda's hot tub about 3 or 4 months ago. I remember Karen and I agreeing that 23.04.118c (Exceptions to bluff setback requirements) did not allow hot tubs within the bluff setback. I had the impression that Karen was going immediately back out to the Permit Center after we talked and delivered that message to someone at the counter. I assumed it was Magda out there...apparently, I was wrong about that.

Lastly, we would not support a Variance to this standard.

I hope that helps.

Matt

EXHIBIT "D"

6-18

EXHIBIT E

6-19

Dear Matt: 10/21/05

Thanks for the response.

I have reviewed Section 23.04.118, and did not come across any language that appeared to disallow the placement of a hot tub at Ms. Fichter's residence.

While I understand that hot tubs are not mentioned in

Section 23.04.118c, the remainder of that Code Section does not appear to provide the basis for what I understand to be your opinion on this matter.

When I spoke to Ms. Cowan, I was advised that you would be providing an explanation of the analysis that led to your decision. It would be appreciated if that could be provided.

Thank you,

Terry

EXHIBIT "E"

6-20

EXHIBIT F

6-21

Terry: 10/24/05

I guess my "analysis" is simple... If we allow a use that is not explicitly identified in the CZLUO (or can be reasonably interpreted to be in the same "family" as something else listed), where does that methodology end? It's a slippery-slope and we are not willing to go there. Also, my determination is consistent with how our department has interpreted this section of the LCP since its inception in 1988.

Let me know if I can be of further assistance.

Matt

EXHIBIT "F"

6-22

EXHIBIT G

6-23

Dear Matt:

10/24/05

Thanks for your prompt response. Are there any written guidelines that have been adopted by the County which provide any support for the interpretation that has been applied to Ms. Fichter's property?

It seems as though under that analysis, the placement of a chair within the bluff setback to watch sunsets might be prohibited, since it is not mentioned as an exception in Section 23.04.118c.

My client purchased and chose to place a portable unit in her backyard, in light of the County Code, which does not appear to prohibit the placement of that type of unit. Your reference to a slippery slope is of interest, since the Code Section at issue does focus on the purpose of restrictions in the bluff setback, which is to "assure stability and structural integrity and to withstand bluff erosion and wave action for a period of seventy-five years without construction of shoreline protection structures...." Ms. Fichter's use of that unit does not in any manner impact the stability of the bluff.

It is respectfully requested that you reconsider the position that the County has taken with regard to this unit.

Your professional courtesy is appreciated.

Thank you,

Terry

EXHIBIT "G"

6-24

EXHIBIT H

6-25

Terry: 10/24/05

I guess the short answer is "no", I know of no guidelines adopted by the county regarding how to interpret 23.04.118c. However, my determination that the hot tub is not allowed is consistent with historical department determinations on this issue. I know that may not seem like much, but members of the public are always telling me that they "wish we would be consistent with our application of the rules". I believe they are just and correct with that request... With that in mind, this is our determination on the hot tub...it is not allowed.

Your client can appeal this determination to the Planning Commission (and ultimately the Board and Coastal Commission) pursuant to 23.01.042b,1,i if she wants to pursue the issue. It would be a "free" appeal (because of LCP issues) and would take approximately 3 months to get in front of the Planning Commission.

Matt

EXHIBIT "H"

6-26

EXHIBIT I

6-27

Dear Matt:

11/07/05

Here's an excerpt from your e-mail to me of October 24, 2005:

"Your client can appeal this determination to the Planning Commission (and ultimately the Board and Coastal Commission) pursuant to 23.01.042b,1,i if she wants to pursue the issue. It would be a "free" appeal (because of LCP issues) and would take approximately 3 months to get in front of the Planning Commission."

I have been advised by my legal assistant, Janis Burns, that you and the Planning Department are now requesting a \$604 fee before the appeal will be accepted. I called your office for clarification of this issue, but you were unavailable, so I left a message.

An explanation would be appreciated. I can be reached at 543-1113.

Thank you,

Terry Schubert

EXHIBIT "I"

6-28

EXHIBIT J

6-29

Terry: 11/07/05

I apologize for the confusion. There has been some internal differences on this issue regarding the fee for coastal zone appeals that are not related to a specific project approval. In other words, because your client is not appealing a project (e.g. a neighbor receiving a MUP for an addition to an existing sfr), some here feel that a fee should be collected for an appeal of a Planning Director's interpretation (even if it is related to a "coastal" issue). Others disagree.

We have an adopted Policy and Procedure for accepting appeals. However, it does not direct us what to do in this case. I will be forwarding the issue to my counsel for an opinion today. In the meantime, your client will need to pay the fee. It will be reimbursed if my counsel directs me to do so.

Matt

EXHIBIT "J"

6-30

EXHIBIT K

6-31

Dear Matt:

11/07/05

Now I am confused. I had understood that you were the person charged with the responsibility for interpreting the County Code, and, in this instance, the fee for the appeal of your decision with regard to Section 23.04.118.

Apparently some other County representative has overruled your opinion that no appeal fee will be imposed, as was set forth in the October 24th e-mail to me, even though this new interpretation does not have any support from the "adopted Policy and Procedure for accepting appeals." An explanation of how this change in interpretation occurred, and who made the new interpretation would be appreciated, as it appears as my client will now need to appeal the imposition of this fee. In that regard, please accept this e-mail as request for a copy of the Policy.

As long as legal counsel is reviewing the imposition of the fee, it is respectfully requested that the underlying appeal issue be revisited as well. A lot of time, effort and cost could be avoided.

Thank you for your consideration of these issues, and your professional courtesy and cooperation.

Best regards,

Terry Schubert

EXHIBIT "K"

